

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2010-5028

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 5, 2010

Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, an in-person hearing was held on January 5, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and State Disability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) On September 16, 2008, claimant filed an application for Medical Assistance and Retroactive Medical Assistance, as well as State Disability Assistance benefits alleging disability.

(2) On February 26, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.22.

(3) On April 15, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On May 27, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On November 5, 2009, the State Hearing Review Team again denied claimant's application and requested a pulmonary function study and an independent consultative physical examination by an internist.

(6) The hearing was held on January 5, 2010. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information was submitted and sent to the State Hearing Review Team on February 19, 2010.

(8) On February 26, 2010, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of medium work per 20 CFR 416.967(c) and unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 203.28.

(9) Claimant is a 48-year-old woman whose birth date is [REDACTED] Claimant is 5' 7" tall and weighs 147 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(10) Claimant last worked in April 2008, as a Certified Nurse's Assistant. Claimant has also worked at a hair supply store selling hair products and doing sales for television.

(11) Claimant alleges as disabling impairments: swelling and injury to the right leg, chronic back pain, scoliosis, fibromyalgia, hypertension, thyroid problems, hysterectomy, carpal

tunnel syndrome in both hands, migraines, asthma, emphysema, chronic obstructive pulmonary disease, panic attacks, stress, bi-polar disorder, post-traumatic stress disorder, and depression.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;

- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence in the record indicates that a January 25, 2010 Medical Examination Report indicates that claimant was 5' 7" tall and weighed 145 pounds. Her blood pressure was 128/86 in her left arm in the sitting position. Temperature is normal. Respiration is 26, pulse is 86 per minute, regular and good volume. Snellen was 20/40 in the right eye and 20/20 in the left eye. Color was within normal limits. No signs of cyanosis, clubbing, jaundice or anemia. HEENT: Normocephalic. Pupils are equal, round, reactive to light and accommodation. Extraocular muscles are intact. Fundoscopy is benign. The neck was subtle with no evidence of any lymphadenopathy or thyromegaly. Carotids are bilaterally palpable with no bruit. The chest was mildly increased in the AP diameter. Rhonchi bilaterally. The heart had no parasternal heave or thrill. Heart sounds 1 and 2 are heard. No gallop or murmur. No JVD. No edema. The

abdomen is soft. No masses. Bowel sounds are present and normal. Non-tender to deep palpation. The musculoskeletal system: warm, no edema, no ulceration. No tenderness. No varicosities. Pulses are symmetrical in the upper and lower. The patient did not walk with a cane. Her gait was normal. Range of motion is essentially normal for most of the joints. Pulmonary function test: Forced Vital Capacity of 2.61, percent predicted 83. Forced Expiratory Volume in 1 second was 2.10, percent predicted was 82. Percent FEV1 was 81%, percent predicted was 98. FEF 25/75 was 2.25 with a percent predicted of 79. There was no significant improvement in Forced Vital Capacity or Forced Expiratory Volume in 1 second in post-medication results.

Overall impression of PFT: These figures indicate normal spirometry at this time. If you look at claimant's lung age according to the test, her actual biological age is 48 years and her lung age indicates a lung age of 77 years. There is significant damage from her smoking over the years. It was be appraisable for her to stop smoking immediately. The impression was:

1) tobacco abuse with mild chronic obstructive pulmonary disease secondary to cigarette smoking; 2) bi-polar disorder with major depression; 3) anxiety and neurosis; 4) panic disorder; 5) essential hypertension; 6) fibromyalgia; 7) migraine headaches by history; 8) carpal tunnel syndrome; 9) status-post three trigger thumb surgeries, two on the right and one on the left.

(New Information, pages C7, P1, P2, P3)

A Mental Residual Functional Capacity Assessment in the record indicates that claimant is markedly limited in several areas, moderately limited in a few areas, but there is no evidence of limitations in any other areas. The Mental Residual Functional Capacity Assessment indicates that claimant is markedly limited in the area of the ability to work in coordination with or proximity to others without being distracted by them; the ability to complete a normal work day and work week without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable amount and length of rest periods; the ability to interact appropriately with the general public; the ability to accept instructions and respond appropriately

to criticism from supervisors; the ability to get along with co-workers and peers without distracting them or exhibiting behavioral extremes; the ability to respond appropriately to changes in the work setting; and the ability to travel in unfamiliar places or use public transportation. Claimant's AXIS GAF was 50, and she was diagnosed with bi-polar disorder I, manic. Comments and Remarks: Claimant suffers from mood shifts, poor impulse control, and low frustration level. Claimant can "fly off the handle in rages that appear to come from nothing." She is very aggressive and has lived a violent lifestyle, cannot tolerate large groups of people or a lot of noise. (Pages P4, P5)

Approximately 200 pages of claimant's medical examination report were from 2004, and not used in making this determination.

A psychological examination report, dated January 29, 2009, indicates that claimant's orientation responses: Claimant stated it was Monday, the 24th, and not the 26th of January, 2009, at about 4:00 p.m. (the actual time was 4:15 p.m.). She gave her full name and stated that she was at the doctor for psychiatric help for Medicaid. She repeated 4 numbers forward and 4 numbers backward, and recalled 2 or 3 objects 3 minutes later. The past few presidents were Barak Obama, George W. Bush, Clinton, and "I don't know." Her date of birth was given as October 7, 1961. Five large cities were Los Angeles, Washington, Detroit, Saginaw and Lansing. Current famous people were Beonce and Denzel Washington. On the calculation test: 100 minus 7 equals 93, and then she did not know serial 7's backwards. 2 plus 3 equals 5, 7 plus 9 equals 16, 3 times 8 was 24, and 7 times 9 equals 45. In abstract thinking: the grass is greener on the other side of the fence was interpreted to mean, "You think it's greener but once you go there, it ain't" and don't cry over spilled milk was interpreted to mean, "Quit crying over something that ain't worth your crying." A bush and a tree are alike in that they both have leaves and limbs, and they are different in that a tree is taller than a bush. With judgment questions: if claimant found a stamped, addressed envelope, she would "put it in the mail" and she would "call for someone

and let others know, and help get them out of the exit,” if she discovered a fire in a theatre. She was diagnosed with bi-polar disorder and a history of alcohol abuse and recent drug dependency. It was stated that claimant should receive some assistance in managing any funds assigned to her due to her history of drug dependency. (Pages 391-393)

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of her body; however, there are insufficient corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. Claimant did testify on the record that she is married and that she has a driver's license and drives once per month. Claimant testified she cooks four times per week and cooks things like chicken, pork chops and spaghetti. Claimant testified that she grocery shops once per month, with help because her legs hurt. She does clean her home by dusting and doing dishes. Claimant testified she paints as a hobby. Claimant testified she can stand for ½ an hour, sit for an hour at a time, walk for 20 minutes, bend at the waist, shower and dress herself and touch her toes. She can sometimes tie her shoes and she stated that she could not squat because of her balance problems. Claimant testified that her level of pain on a scale from 1 to 10 without medication is an 8 and with medication is a 2. Claimant testified that she can carry 15 pounds, and that repetitively she can carry a Bible and a purse. Claimant testified that she does smoke a pack of cigarettes per day and that her doctor has told her to quit. She is not in a cessation program. Claimant testified that she does not take drugs or drink and that she used to take marijuana and take crack but stopped approximately 12 years ago.

There are insufficient medical findings that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, claimant has

restricted herself from tasks associated with occupational functioning based upon her complaints of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from her reportedly depressed state.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

The mental residual functional capacity assessment in the record is inconsistent with the mental assessment report. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. There is insufficient objective medical evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. In addition, based upon the claimant's medical records, it is documented that claimant had heavy use of alcohol as well as drugs and tobacco, which would have contributed to her physical and any alleged mental problems. For these reasons, the evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment and this Administrative Law Judge finds that claimant has failed to meet her burden of proof at Step 2. Claimant must be denied benefits at this step based upon her failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that she would meet a statutory listing in the code of federal regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny her again at Step 4 based upon her ability to perform her past relevant work. Until April 2008, when claimant's mother passed away, she was a Certified Nurse's Assistant for her mother and acted as a home health care aide. Claimant has worked in a hair supply store selling hair care supplies. As a hair care supplier does not require strenuous physical exertion, there is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work which she has engaged in, in the past. Claimant also did testify that she cared for her mother until her death, and did not state that she was unable to care for her because of health reasons. Therefore, this Administrative Law Judge finds that claimant should be able to perform some of her prior work even with her impairments. Thus, if claimant had not already been denied at Step 2, she would be denied again at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same

meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Claimant has submitted insufficient objective medical evidence that she lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment or that she is physically unable to do light or sedentary tasks if demanded of her. Claimant's activities of daily living do not appear to be very limited and she should be able to perform light or sedentary work even with her impairments. Claimant has failed to provide the necessary objective medical evidence to establish that she has a severe impairment or combination of impairments which prevent her from performing any level of work for a period of 12 months. The claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work.

Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Claimant did testify that she does receive some relief from her pain medication. Claimant also continues to smoke cigarettes despite the fact that her doctor has told her to quit, and despite

the fact that she has emphysema and chronic obstructive pulmonary disease. Claimant is not in compliance with her treatment program.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

Claimant is disqualified from receiving disability at Step 5 based upon the fact that she has not established by objective medical evidence that she cannot perform light or sedentary work even with her impairments. Under the Medical Vocational guidelines, a younger individual (age 48), with a high school education and an unskilled work history who is limited to light work is not considered disabled pursuant to Medical Vocational Rule 202.22.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with her impairments. The department has established this case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

/s/

Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 04, 2010

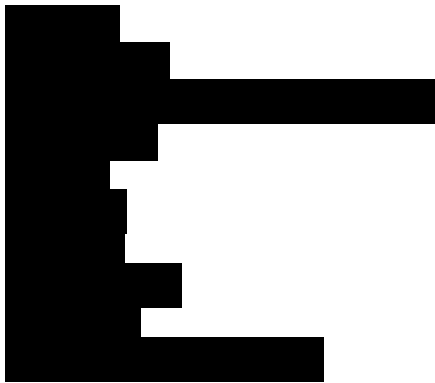
Date Mailed: June 7, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

LYL/cv

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